

### **REMARKS**

In an Office Action dated June 25, 2008 ("Office Action"), the Examiner rejected claims 1-4, 14-17, 21-23, 27-30, and 40-43 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,165,044 to Chaffee ("*Chaffee*") in view of Applicant's Background ("*Background*") in further view of U.S. Patent No. 6,327,571 to Khayat et al. ("*Khayat*"), and rejected claims 5-7, 18-20, 24-26, 31-33, and 44-46 under 35 U.S.C. §103(a) as being patentable over *Chaffee*, *Khayat*, and *Background*, in further view of U.S. Patent No. 5,999,193 to Conley et al. ("*Conley*").

In this Response, Applicant has amended claims 1, 14, 21, 27, and 40. These amendments add no new matter and are fully supported by the specification. Applicant respectfully traverses the aforementioned rejections and requests reconsideration based on the following remarks. In addition, Applicant does not necessary agree with or acquiesce in the Examiner's characterization of the claims or the applied references, even if those characterizations are not addressed herein.

### **Examiner's Statements in Office Action**

As an initial matter, Applicant specifically notes that Applicant does not agree with the comments made by the Examiner in the instant Office Action characterizing Applicant's *Background*. Particularly, the Examiner states that Applicant's *Background* "discloses processing [information relating to the general performance of a business and the performance of an industry], and displaying said information." Office Action, page 4. Applicant respectfully notes that nowhere does Applicant's *Background* disclose or suggest such processing or displaying steps. Any acknowledgement of the teachings of the prior art by Applicant is limited to the teachings specifically recited in Applicant's *Background*.

**Claim Rejections Under 35 U.S.C. §103(a)**

Applicant respectfully traverses the rejection of claims 1-7, 14-33, and 40-46 under 35 U.S.C. §103(a) because a *prima facie* case of obviousness has not been established with respect to these claims. Although Applicant respectfully disagrees with the basis for the Examiner's rejection, in the interest of expediting allowance of the pending claims, Applicant has amended claims 1, 14, 21, 27, and 40. As discussed in detail below, Applicant submits that the claims, as amended, even more clearly distinguish the claims from the cited references.

**Claims 1-4, 14-17, 21-23, 27-30, and 40-43**

Claims 1-4, 14-17, 21-23, 27-30, and 40-43 stand rejected under 35 U.S.C. §103 as being unpatentable over *Chaffee* in view of Applicant's *Background* in further view of *Khayat*. By this amendment, Applicant has amended claim 1 to recite a method for visualizing numerical benchmarks to interpret the performance of a business including, *inter alia*:

“... creating a display based on ... information loaded into [a] spreadsheet application, including in the display a graphical shape bilaterally symmetric about a first axis and having a left and right side, the left side of the graphical shape being associated with [an] upper quartile value, the right side of the graphical shape being associated with [a] lower quartile value, and the first axis being associated with [a] median value...”

Applicant respectfully submits that *Chaffee*, Applicant's *Background*, and *Khayat*, whether viewed separately or in combination, fail to disclose or suggest at least these claimed features.

*Chaffee* generally discloses “a management system for investments” capable of generating “comprehensive accounting and financial reports of security investment portfolios.” *Chaffee*, Col. 1: ll. 7-14. A user of the system of *Chaffee* “specifies one or more portfolios that he or she would like to compare and the index against which the one or more portfolios are to be compared.” *Id.* at Col. 12: ll. 18-21. Nowhere, however, does *Chaffee* disclose or suggest “creating a display based on ... information loaded into [a] spreadsheet application, including in

the display a graphical shape bilaterally symmetric about a first axis and having a left and right site, the left side of the graphical shape being associated with [an] upper quartile value, the right side of the graphical shape being associated with [a] lower quartile value, and the first axis being associate with [a] median value," as recited in claim 1. In fact, the Examiner acknowledges this deficiency of *Chaffee* in the instant Office Action, noting that "*Chaffee* ... fail[s] to disclose creating a display based on information loaded into the database application ... " Office Action, page 4.

Applicant's *Background* fails to cure the aforementioned deficiencies of *Chaffee*. As noted by the Examiner, "[Applicant's *Background* ] fail[s] to disclose creating a display based on information loaded into the database application ... " Office Action, page 4. Accordingly, Applicant's *Background* also fails to disclose or suggest "creating a display based on ... information loaded into [a] spreadsheet application, including in the display a graphical shape bilaterally symmetric about a first axis and having a left and right site, the left side of the graphical shape being associated with [an] upper quartile value, the right side of the graphical shape being associated with [a] lower quartile value, and the first axis being associate with [a] median value," as recited in claim 1.

*Khayat* fails to cure the deficiencies of *Chaffee* and Applicant's *Background*. *Khayat*, generally discloses "a computer-implemented method and apparatus for generating, processing and transforming data relating to process assessment for a company, organization, project or other entity." *Khayat*, Col. 1: ll. 49-52. *Khayat* further discloses plotting such data in the form of a "Kiviat chart, also referred to as a spider plot" or according to a "full scale." *Id.* at Col. 3: ll. 64-65 and Col. 5: ll. 61-63. Nowhere, however, does *Khayat* disclose, or even suggest, "creating a display based on ... information loaded into [a] spreadsheet application, including in the display a graphical shape bilaterally symmetric about a first axis and having a left and right site, the left side of the graphical shape being associated with [an] upper quartile value, the right side of the

graphical shape being associated with [a] lower quartile value, and the first axis being associate with [a] median value," as recited in claim 1. Accordingly, *Chaffee*, Applicant's *Background*, and *Khayat*, whether viewed separately or in combination, fail to disclose or suggest each and every element recited in the pending claims.

Moreover, regarding the Examiner's assertion that "business ratios being quick ratios, current ratios, return on assets, and return on equity, are old and well known in the art," to the extent that the Examiner is taking Official Notice that such limitations are "well known," Applicant reminds the Examiner that when relying on common knowledge, or taking Official Notice, to support a rejection under 35 U.S.C. §103, "the [Examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test. *In re Zurko*, 258 F.3d 1379, 1386, 59 U.S.P.Q.2d 1693, 1697. Furthermore, if the Examiner is relying on personal knowledge to support the finding of what is known in the art, the Examiner must provide an affidavit or declaration setting forth specification factual statements and an explanation to support the finding. See 37 C.F.R. §1.104(d)(2). If the Examiner maintains the rejection by relying on the position that "business ratios being quick ratios, current ratios, return on assets, and return on equity, are old and well known in the art," Applicant asks that the Examiner provide additional evidentiary evidence, either in the form of a reference or affidavit, to support this statement.

For at least the above reasons, *Chaffee*, Applicant's *Background*, and *Khayat* do not render obvious claim 1. Therefore, Applicant submits that claim 1 is allowable. Amended claims 14, 21, 27, and 40 recite similar limitations as claim 1 and are therefore allowable for at least the same reasons as claim 1. Claims 2-4, 15-17, 22-23, 28-30, and 41-43 depend from one of claims 1, 14, 21, 27, and 40, and are allowable for at least the same reasons as the claim from which they depend. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1-4, 14-17, 21-23, 27-30, and 40-43 under 35 U.S.C. §103.

Claims 5-7, 18-20, 24-26, 31-33, and 44-46

Claims 5-7, 18-20, 24-26, 31-33, and 44-46 stand rejected under 35 U.S.C. §103 as being patentable over *Chaffee*, *Khayat*, and Applicant's *Background*, in further view of *Conley*. Without acquiescing to the correctness of the Examiner's rejections and solely in the interest of further prosecution, Applicant has amended claim 1 to recite "creating a display based on ... information loaded into [a] spreadsheet application, including in the display a graphical shape bilaterally symmetric about a first axis and having a left and right site, the left side of the graphical shape being associated with [an] upper quartile value, the right side of the graphical shape being associated with [a] lower quartile value, and the first axis being associate with [a] median value." Independent claims 14, 21, 27, and 40 recite elements similar to the elements recited in claim 1. As discussed above with respect to the Examiner's rejection of claims 1, 14, 21, 27, and 40 under 35 U.S.C. §103, *Chaffee*, Applicant's *Background*, and *Khayat* fail to disclose or suggest at least the aforementioned claimed features. Claims 5-7, 18-20, 24-26, 31-33, and 44-46 depend from one of claims 1, 14, 21, 27, and 40, and thus incorporate all of the elements respectively recited in the claim from which they depend. Accordingly, *Chaffe*, Applicant's *Background*, and *Khayat* also fail to disclose or suggest every element required by claims 5-7, 18-20, 24-26, 31-33, and 44-46.

*Conley* fails to cure the deficiencies of *Chaffe*, Applicant's *Background*, and *Khayat*. *Conley* generally discloses "a system for electronically generating at least one intelligent, color-code visual object chart or charts." *Conley*, Col. 3: ll. 14-16. More specifically, *Conley* discloses a system for generating charts that include "visual objects" and "comparator lines" which form a bar chart. *Id.* at Col. 4: ll. 19-33 and Figure 2. Nowhere, however, does *Conley* disclose, or even suggest, "creating a display based on ... information loaded into [a] spreadsheet application, including in the display a graphical shape bilaterally symmetric about a first axis and having a left and right site, the left side of the graphical shape being associated with [an] upper

quartile value, the right side of the graphical shape being associated with [a] lower quartile value, and the first axis being associate with [a] median value," as recited in claim 1 and similarly recite in claims 14, 21, 27, and 40. Accordingly, *Chaffee*, Applicant's *Background*, *Khayat*, and *Conley*, whether viewed separately or in combination, fail to disclose or suggest each and every element recited in the pending claims.

For at least the above reasons, *Chaffee*, Applicant's *Background*, *Khayat*, and *Conley* do not render obvious the pending claims. Therefore, Applicant submits that claims 5-7, 18-20, 24-26, 31-33, and 44-46 are allowable. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 5-7, 18-20, 24-26, 31-33, and 44-46 under 35 U.S.C. §103.


#### **Conclusion**

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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